

CHAPTER 1 OVERVIEW OF RECURRING REVIEWS

1-1. Introduction. This Engineer Pamphlet (EP) presents procedures for developing and implementing Recurring Review requirements for ordnance and explosives (OE) response actions. The purpose of Recurring Reviews for OE response actions is to determine if a response action continues to minimize explosives safety risks and continues to be protective of human health, safety, and the environment. Recurring Reviews are conducted under the Long Term Management phase once a Formerly Used Defense Site (FUDS) achieves Response Complete. Recurring Review satisfies the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) five-year review requirement.

a. Responsibility for executing an OE Recurring Review depends on whether the site is a FUDS or an active or transferring installation.

(1) FUDS. OE Recurring Reviews at FUDS are the subject of this pamphlet. OE Recurring Reviews at sites that were formerly under the jurisdiction of the Department of Defense (DOD), but which subsequently have been transferred out of DOD control (i.e., FUDS) are conducted under the Defense Environmental Restoration Program-FUDS (DERP-FUDS). Authority for executing OE response actions at FUDS has been delegated to the United States Army Corps of Engineers (USACE) by DOD through Headquarters, Department of the Army (HQDA). It is the responsibility of the USACE district, which serves as the Project Manager (PM), to execute OE Recurring Reviews for FUDS.

(2) Active or Transferring Installations. OE response actions at active installations are conducted under the Installation Restoration Program (IRP). OE response actions at transferring installations are conducted under the Base Realignment and Closure (BRAC) program. While this pamphlet does not directly apply to active or transferring installations, the procedures described in this pamphlet may be helpful for conducting Recurring Reviews at active or transferring installations, depending on the installation's requirements. The USACE may or may not be involved in OE response actions at active or transferring installations.

b. OE Response actions may be planned, managed, and executed using either the removal or remedial process. Further information on this topic will be published at a later date in the proposed Engineer Regulation (ER) 200-3-1, Formerly Used Defense Sites Program Guidance. If further assistance is needed with regards to this issue, contact the OE Mandatory Center of Expertise (OE MCX) (hereinafter referred to as the OE CX).

1-2. OE Recurring Review Regulatory Authorities.

a. Major Subordinate Commands (MSC), district commands, OE Design Centers, and the OE CX will comply with all applicable statutes and regulations. The determination of the

governing statutes and regulations for any specific OE project will be made by the District Office of Counsel in consultation with counsel supporting the OE CX for FUDS, or the appropriate legal representative of the sponsoring agency for work performed by USACE under a different program or authority (e.g., BRAC, IRP, or Work for Others). All USACE elements will comply with DOD and Department of the Army (DA) safety and health regulations and procedures.

b. CERCLA. The CERCLA was enacted by Congress in 1980 and subsequently amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) [Public Law 96-510, 94 Stat. 2767, 42 United States Code (U.S.C.) 9601 and 9621, as amended by SARA, Public Law 99-499, 100 Stat 1613, (together referred to as "CERCLA")]. CERCLA requires the review of response actions no less than every five years to assure that human health and the environment are being protected.

(1) NCP. The National Oil and Hazardous Substance Pollution Contingency Plan (NCP), which was first promulgated in 1973 under the Clean Water Act and last substantially amended in February 1994, recognized DOD as the removal response authority for incidents involving munitions. The NCP presents a procedural and organizational framework for preparing and conducting response actions as described in 40 Code of Federal Regulations (CFR) Part 300. It also provides that remedial actions that do not allow unlimited use and unrestricted exposure must be reviewed no less than every five years following initiation of the on-site field work phase to implement the selected response action or more frequently if required by the decision document.

c. DERP. The Defense Environmental Restoration Program (DERP) was established by Congress in 1986 under Chapter 160 of SARA. As stated in 10 U.S.C. 2701, DERP directed the Secretary of Defense to "carry out a program of environmental restoration" at facilities under the jurisdiction of the Secretary of Defense. DERP includes the FUDS program and the IRP and provides for Recurring Reviews on FUDS OE sites.

d. BRAC. The Base Realignment and Closure Act of 1988 (Public Law 100-526, 102 Stat. 2623) and the Defense Base Realignment and Closure Act of 1990 (Public Law 101-510, 104 Stat. 1808), 10 U.S.C. 2687, provide for a recurring, systematic review and evaluation of all closing installations operated by the U.S. Armed Forces.

1-3. Purpose of the Recurring Review. The purpose of Recurring Reviews for OE response actions is to determine if a response action continues to minimize explosives safety risks and continues to be protective of human health, safety, and the environment. Recurring Reviews also provide an opportunity to assess the applicability of new technology for addressing previous technical impracticability determinations.

a. The scope of the review will be site-specific and will depend upon the response objectives and the specific responses implemented. The review will evaluate appropriate site-

specific factors that may impact the continued effectiveness of the response. These factors may include changes in physical conditions at the site, changes in public accessibility and land use, and the applicability of new technology for addressing a previous technical impracticability determination. The review will also evaluate the maintenance and enforcement of Land Use Controls (LUCs). Further detail regarding the scope of the review is provided in Chapters 2 and 3 of this EP.

b. The Recurring Review will answer three general questions:

(1) Is the response functioning as intended?

(2) Are any assumptions used at the time of response selection still valid?

(3) Does new information indicate that the previously selected response no longer minimizes explosives safety risks or is no longer protective of human health, safety, and the environment considering the best available technology?

c. Data Quality Objectives (DQOs) will be developed during the Recurring Review planning process as described in Engineer Manual (EM) 200-1-2, Technical Project Planning (TPP) Process.

1-4. Sites Requiring a Recurring Review.

a. The decision document for an OE response action conducted on a non-National Priorities List (NPL) site under the remedial process will identify if a Recurring Review is required for a site. All sites where an OE response action is implemented require Recurring Reviews. EP 1110-1-18 provides additional information on the Action Memorandum, which documents the response decision for an OE response action conducted under the non-time critical removal action (NTCRA) process. The Action Memorandum will be the decision document at some sites.

b. Sites where the decision document identifies a determination of No DOD Action Indicated (NDAI) because there is no evidence of OE, do not require Recurring Reviews unless a risk is identified at a later date. If a risk is identified at a later date, USACE will address the risk in accordance with EP 1110-1-18. Sites with an NDAI determination based on other conditions such as low risk, technical impracticability, etc., do require Recurring Reviews.

c. Sites that require a Recurring Review for an OE response action may also require a five-year review for Hazardous, Toxic, and Radioactive Waste (HTRW) hazards. The OE and HTRW reviews should be coordinated.

1-5. Frequency of Recurring Reviews.

a. The Project Delivery Team (PDT), in coordination with stakeholders and regulators, will determine the frequency for conducting Recurring Reviews at a site and the duration for continuing Recurring Reviews.

(1) If a Recurring Review is required at a site, it will be conducted no less than every five years following initiation of the on-site field work phase to implement the selected response action.

(2) The review cycle may be more frequent than every five years, if necessary, depending on site-specific conditions and design considerations. For example, soil erosion, wave processes, or other factors may create environmental conditions which alter the potential for exposure to OE items (e.g., exposing previously buried items or increasing the accessibility to a property containing OE items) that may suggest that it is appropriate/necessary to conduct a Recurring Review more frequently than every five years.

(3) Recurring Reviews may be necessary for up to 30 years depending on site conditions, however sound design considerations will be used in making this determination. Thirty years is a suggested duration of Recurring Reviews used for government planning purposes. Factors to consider in assessing termination of Recurring Reviews are further discussed in paragraph 4-3.

b. The proposed frequency and duration of Recurring Reviews at a site will be documented in the Engineering Evaluation/Cost Analysis (EE/CA) report or Remedial Investigation/Feasibility Study (RI/FS) report. The decision document will document whether a Recurring Review will be conducted but it will not specify the frequency or duration of Recurring Reviews at a site.

c. The time frame for Recurring Review efforts will be tracked in the Formerly Used Defense Sites Management Information System (FUDSMIS) by the district PM.

d. Should a problem with an implemented OE response be identified or an incident occur between scheduled Recurring Reviews, a request for a Recurring Review may be submitted to the FUDS Manager at the USACE district office to have the OE response action reviewed. Depending on the nature of the issue, the USACE district office may generate a Recurring Review Report or use a less formal documentation method.

e. Subsequent reviews will be conducted no later than five years, or more frequently if specified, from the signature date on the previous Recurring Review Report.

1-6. Funding.

a. FUDS.

(1) The Defense Environmental Restoration Account (DERA) will fund Recurring Review activities for FUDS projects. Funding for Recurring Reviews is subject to approval of the district's annual OE Work Plan. The active sites program imposes a 10-year funding limit on Recurring Reviews, while the FUDS program does not currently identify such a limit.

(2) It is the responsibility of the USACE district, which serves as the PM, to program funding requirements for Recurring Reviews, input and track milestones in the FUDSMIS, input information to the Corps of Engineers Financial Management System (CEFMS), and develop and implement Recurring Review plans for OE response activities. Funding requirements should include adequate funding for all offices associated with the Recurring Review as well as adequate funding for personnel from other offices to participate in the Recurring Review, as necessary. Effective Recurring Review efforts require the commitment of Federal, state, local, and individual resources. Additional detail regarding developing programming cost estimates can be found in EM 1110-1-4009, OE Response.

b. Active or Transferring Installations.

(1) The installation/Installation Management Agency (IMA) is responsible for updating the Restoration Cost-to-Complete System (RCTCS) to ensure that the necessary funds are included to conduct Recurring Reviews. The installation/IMA is responsible for updating the Army Environmental Database-Restoration (AEDB-R) to ensure required funds identified in the RCTCS are programmed to conduct Recurring Reviews. The installation/MACOM needs to program funds in at least two quarters prior to the trigger date of the first response action that requires a recurring review. This advance programming of funds is necessary to ensure that the review is completed within the specified time. The active sites program imposes a 10-year funding limitation on Recurring Reviews; however, there is no corresponding limitation imposed for the active or transferring installations.

(2) BRAC installation reviews will be funded out of the BRAC account.

1-7. Notification. Stakeholders and regulators will be involved in the preparation of the Recurring Review Plan, which is the first step in the Recurring Review process. The PM will then notify stakeholders and regulators at the time a Recurring Review is being initiated in order to seek their involvement. Another broad notification will also be made when a Recurring Review is completed. The PM will notify stakeholders of the need for the Recurring Review by hosting an open meeting in the local community and through other standard communication techniques, such as notices in local newspaper, press releases and/or direct mailings, as required. Chapter 3 and EP 1110-3-8, Public Participation in the Defense Environmental Restoration Program (DERP) for Formerly Used Defense Sites (FUDS) provides further information

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regarding stakeholder and regulator involvement in the Recurring Review process and details on notification requirements and procedures.